a physician attending a patient with a contagious or infectious disease to exercise reasonable care to advise members of the family and others liable to be exposed of the nature of the disease and the danger of exposure. *Davis* v. *Rodman* (Ark., 1921), *227* S. W. 612.

A legal duty resting on the defendant to use care or skill is an essential element of actionable negligence. *Curtin* v. *Somerset,* 140 Pa. St. 70. The leading effort to formulate this duty found in *Heaven* v. *Pender,* L. R. 11 Q. B. D. 503 (1883), is broad in its language. The court there said: "Whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger." Although the courts have often quoted this rule, they have, in general, held that there are but two classes in which a legal duty arises: 1st, anyone in the exercise of his own legal rights is bound to use ordinary care not to injure others (*Colchester* v. *Brooke,* 7 Adolphus & Ellis N. S. 377); 2nd, anyone undertaking to do something for another, whether by express contract or otherwise, must act with due care. *Black* v. *N. Y., N. H., and Hartford Ry. Co.,* 193 Mass. 448. Although the principal case is within neither of these two well-established classes it involves a probably not unreasonable application of the general rule in holding that a physician owes a legal duty not only to a patient or to one who has employed him to care for someone else but to all members of the family and others who are liable to be exposed to the disease. The only precedent for this decision is the recently decided case of *Skillings* v. *Allen,* 143 Minn. 323, where it was held that a physician in telling plaintiff who had employed him to care for his child sick with scarlet fever that there would be no danger from contagion in taking the child home from the hospital while peeling, was guilty of negligence. Although the court talks about the contractual duty of the defendant to the parents who had employed him, the case is decided on the grounds of tort liability.

PUBLIC UTILITIES—RATES—POWER TO CONTRACT UNDER GRANT OF POWER TO FIX RATES.—Certain Iowa cities passed ordinances conferring on appellants franchises to use the streets for twenty-five, (in one case twenty,) years on condition that they should charge specified maximum rates. Appellant companies sought injunctions to restrain these rates, which for the purposes of the suits are admitted to be confiscatory. The District Court held the rates fixed depended on contracts, which the municipalities had power to make, and decreed enforcement of the ordinance rates. Upon appeal, *held,* that under the Iowa statutes there was no such power to fix contract rates. *Southern Iowa Electric Co.* v. *Chariton,* U. S. Sup. Ct., April 11, 1921.

These cases carry a step further the development of the law of rate fixing considered in 19 MICH. L. REV. 547, and other notes there referred to.

The court clearly distinguishes between rates fixed by governmental regulation, and by contract. If a governmental agency having the necessary power to contract enters into a rate agreement with a public utility the rates so fixed are binding on both parties as matter of contract, whether on the one hand they are excessive, or on the other they are so low as to be confiscatory. As to the power of the legislature or a commission to override such contracts see previous notes in 18 MICH. L. REV. 806; 19 *ib.* 112, 547. But *cf. Ohio & Col. S. & R. Co.* v. *Pub. Util. Com.*, (Col., 1920), 187 Pac. 1082; *Charleston* v. *Pub. Serv. Com.*, (W. Va., 1920), 103 S. E. 673; *People* v. *Nixon*, 180 N. Y. Supp. 130 (1920); and *Re Southern Pub. Utilities Co.*, (N. C., 1919), 101 S. E. 619; *Sapulpa* v. *Oklahoma Nat'l Gas Co.*, (Okl., 1920), 192 Pac. 224; *Hoyne* v. *Chicago & Oak Park El. R. Co.*, (Ill., 1920), 128 N. E. 587. Such cases as the present depend upon the existence or non-existence of binding contracts as to rates. The decision of *Home Telephone Co.* v. *Los Angeles*, 211 U. S. 265, was regarded as a great victory for the public. Many foolish and wicked franchise grants to public utilities had been made by legislative bodies to the great detriment of an outraged public. This case held that such powers to a municipality to grant franchises were to be strictly construed, and that power "to fix and determine the price of gas and electric light" did not authorize the municipality to abandon that power, and to establish irrevocably rates for the entire period of the franchise. As has so often happened in contests between the public and the utilities after events have turned rejoicing into weeping. While conditions favored lowering of franchise rates the public rejoiced in this decision. But now that every utility is seeking higher than franchise rates the rule is invoked to plague the public. Statutes and decisions, or a combination of the two, intended as shields of defense turn out to be swords of attack. So here. To prevent profligate grants of rights many states, by statute or constitution, provided that the right to fix rates and regulate public utilities shall not be abridged, or that no irrevocable or uncontrollable grant shall be made. There was such a statute in Iowa, and the court found that this established "total want of power of the municipalities to contract for rates." The cases, then, were to be decided, not on the ground of contract obligation, but under governmental power to regulate. As the franchise rates were conceded to be confiscatory the decisions in their favor were reversed. On the same day the court reached the same conclusion in *City of San Antonio* v. *San Antonio Pub. Serv. Co.* The Texas restriction is in the Constitution, but the Constitution grants "home rule" to cities. This does not affect this question, See also *Detroit* v. *Michigan R. Com.*, (Mich., 1920), 177 N. W. 306. There was no express or implied power in the city to make such a contract. *Home Telephone Co.* v. *Los Angeles*, 211 U. S. 265, 273, does not mean that "limitations by contract on the power of government to regulate rates to be charged by a public service corporation are to be implied for the purpose of sustaining the confiscation of private property." In any case if the utility and the municipality agree to abrogate the rate contract the private user has no vested interest in it that will enable him to enforce the rate for his service. *Phelps* v. *Logan Nat'l Gas and Fuel Co.*, (Ohio, 1920), 128 N. E. 58.